(5)

Supreme Court, U.S.
FILED

DEC 14 2000

OFFICE OF THE CLERK

No. 00-292

In The

Supreme Court of the United States

C&L ENTERPRISES, INC.,

Petitioner,

v.

CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA,

Respondent.

On Writ Of Certiorari To The Court Of Civil Appeals Of Oklahoma, Second Division

JOINT APPENDIX

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Petition For Certiorari Filed: August 22, 2000
Certiorari Granted: October 30, 2000

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IN THE DISTRICT COURT IN AND FOR
OKLAHOMA COUNTY, OKLAHOMA

* * *

08/07/1995 PETITION

08/07/1995 SUMMONS ISSUED – PPS

* * *

08/09/1995 SUMMS SVD/JOHN A BARRETT JR SGND LESLIE GREGG 8-8 R:1701 F:0945

08/25/1995 MOTION TO DISMISS

08/25/1995 BRIEF IN SUPPORT OF MOTION TO DISMISS

08/29/1995 ENT:DEFT MOTION TO DISMISS SET FOR 9-22-95 @9AM

* * *

09/11/1995 OBJECTION TO: DEFT'S MOT TO DISMISS/C&L ENTERPRISES

09/21/1995 REPLY BRIEF

09/22/1995 ENT:MOTION TO DISMISS: OVERRULED, DEFENDANT GRANT D 20 DAYS TO ANSWER./L. FREEMA

* * *

09/26/1995 AMENDED MOTION TO RECONSIDER ~~AND~~ SUPPORTING BRIEF

09/26/1995 ENT:MOTION TO RECONSIDER SET FOR 10-13-95 @9AM

09/26/1995 MOTION TO RECONSIDER AND SUPPORTING BRIEF

* * *

09/28/1995 MOTION TO RE CONSIDER ORIGINALLY FILED 9-26-95

* * *

10/03/1995 OBJECTION TO DEFT'S MOTION TO RECONSIDER

10/10/1995 ENT: MOT FOR CONFIRMATION OF ARBITRATION AWARD SET FOR 10-27-95 @9AM

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10/13/1995 ENT.: MOT TO RECONSIDER: DENIED./L. FREEMAN

* * *

10/20/1995 APPLICATION FOR STAY & SUPPORTING BRIEF

10/27/1995 ENT: MOT FOR CONFIRMATION OF ARBITRATION AWARD: SUSTAINED./L. FREEMAN

10/27/1995 JOURNAL ENTRY OF JUDGMENT CONFIRMING ARBITRATION AWARD/L. FREEMAN

10/30/1995 APPLICATION TO TAX ATTY FEES AND COSTS

10/30/1995 ENT: APPLICATION TO TAX ATTY FEES & COSTS SET FOR 11-17-95 @9AM.

11/09/1995 GARNISHMENT SUMMONS ISSUED – PPS

* * *

11/17/1995 ENT: TEMPORARY STAY BY SUPREME CT ON 11/14/95 STAYING ANY FURTHER

ENFORCEMEN T OF JUDGMENT OR PROCEEDINGS TO DETERMINE ATTY FEES. TO BE RE-SET AT LATER TIME IF NECESSARY. L. FREEMAN

11/27/1995 ANSWER TO GARNISHMENT/SEE ATTACHED

11/27/1995 COPY OF PETITION IN ERROR & PRELIMINARY STATEMENT

11/28/1995 DESIGNATION OF RECORD R: F:

11/29/1995 CERTIFICATE OF APPEAL

12/08/1995 COUNTER DESIGNATION OF RECORD

* * *

12/15/1995 RESPONSE TO PETITION IN ERROR AND PRELIMINARY STATEMENT

12/15/1995 ENTRY OF APPEAR NCE [sic] R: F:

12/19/1995 AMENDED DESIGNATION OF RECORD

12/26/1995 DESIGNATION OF RECORD R: F: ORIGINALLY FILED 11-28-95

* * *

01/25/1996 SPECIAL APPEARANCE MOTION TO DISMISS GARNISHMNET [sic] PROCEEDINGS & SUPPORTING BRIEF ATTY MICHAEL MINNIS FOR CITZEN BAND POTAWATOMI INDIAN TRIBE OFF [sic] OKLA

01/26/1996 PLTF'S INTERROGATORIES TO GARNISHEE FIRST NATIONAL BANK OF SHAWNEE

01/29/1996 WRITTEN NOTICE OF REMOVAL

01/29/1996	ANSWER TO GARNISHMENT/FEDERALLY EXEMPT FUNDS SEE ATTACHED AUTHORITY
02/05/1996	GARNISHEE'S RESPONSE TO PLTF'S INTERROGATORIES
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03/07/1996	FIRST AMENDED APPLICATION TO TAX ATTY FEES & COSTS
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03/21/1996	ORDER TAXING ATTY FEES & COSTS/L FREEMAN R:1768 F:4545
03/22/1996	CASE RE-ASSIGNED PER ADMIN ORDER 87-96-09
03/25/1996	ENT:BOUND RECORD ON APPEAL, READY FOR TRANSMISSION TO THE SUPREME COURT
03/25/1996	COURT CLERK CERTIFICATE
03/26/1996	NOTICE OF COMPLETION MAILED TO ATTORNEYS OF RECORD
03/26/1996	CERT MAILING OF NOC TO JAMES PATTERSON ON 3/26/96 Z 709 480 895
03/28/1996	NOTICE SVD JAMES PATTERSON CLERK OF THE SUPREME COURT SIGN ILLEG 3-27-96
03/28/1996	GARNISHMENT SUMMONS SVD/ BANK ONE SIGN KAMPHAUS 3-25-96

04/17/1996 AMENDMENT TO PETITION IN ERROR/ SC #86568

04/19/1996 2ND AMENDED DESIGNATION OF RECORD

04/22/1996 SUPPLEMENTAL COURT CLERK CERTIFICATE

05/02/1996 MOTION OR APPLICATION FOR H.O.A. – POST-JE

* * *

05/02/1996 HEARING FOR HOA 6/5/96 10AM ROBERTSON

05/02/1996 ORDER FOR H.O.A. ISSUED – PPS

05/07/1996 RESPONSE TO PETITION IN ERROR/SC #86568

05/13/1996 ORD FOR HOA SVD/JOHN A BARRETT JR IN PRS 5-3 R1783 F5428

05/24/1996 BRIEF OF APPELLANT/SC #86568

06/04/1996 ORD TRANSFER TO OTHER JURISDICTION R: F:

06/04/1996 NOTICE OF REMOVAL

* * *

06/04/1996 SPECIAL APPEARANCE & RESPONE TO ASSET HEARING SUBPOENA/CITIZEN BAND POTAWATOMIE INDIAN TRIBE OF OKLA R:1790F:3056

* * *

06/05/1996 ENT: HOA CONT BY COURT TO BE RESET PENDING RESOLUTION OF REMOVAL ACTION IN FEDERAL COURT, IF REMANDED NOTICE TO DEFT ATTY MENNIS IS SUFFICIENT/ROBERTSON

07/03/1996 ANSWER BRIEF OF APPELLEE/SC #86568

07/23/1996 REPLY BRIEF OF APPELLANT/SC #86658

08/07/1996 CLAIM FOR EXEMPTION - SET FOR HEARING 8-14-96 @10 D. HOWARD

* * *

08/07/1996 NOTICE OF CONTINUED HEARING FOR JUDGMENT DEBTOR TO APPEAR & ANSWER CONCERNING PROPERTY R 1811 F 484

08/08/1996 ORDER (COPY FROM UNITED STATES DISTRICT COURT) R:1811F:1801

08/08/1996 ORDER/CONTINUANCE GRANTED/ HOWARD R:1811 F:1798

08/08/1996 ENT: CLAIM EXEMPT - RESET B/A 8/19/96 @10AM - HOWARD

08/08/1996 MOTION FOR CONTINUANCE

08/08/1996 ORDER/(COPY FROM UNITED STATES DISTRICT COURT) R:1811F:1799

* * *

08/19/1996 ENT:CLAIM EXEMP - O/R - HOWARD

08/19/1996 ENT: CLAIM EXEMP - UNDERADVISEMENT - HOWARD

08/19/1996 ORDER DETERMINING CLAIM FOR EXEMPTION & DIRECTING DISTRIBUTION OF FUNDS/HOWARD

08/20/1996 MOTION FOR APPROVAL OF SUPER-SEDEAS BOND & SUPPORTING BRIEF

08/26/1996 MOT OR APPLIC FOR CONTEMPT CIT - POST-JE

* * *

08/26/1996 ORDER FOR CITATION ISSUED - PPS

08/26/1996 HEARING 9-04-96 10AM WRIGHT

* * *

08/27/1996 ORD FOR H.O.A. SVD/FIRST NATL BK OF SHAWNEE BY SVG JAMES R HAYDEN EXECUTIVE VICE PRESIDENT NPRS ON 8-26-96 R:1818F:1409

* * *

08/28/1996 OBJECTION TO DEFT'S MOTION FOR APPROVAL OF SUPERS DAS BOND AND BRIEF IN OPPOSITI THERTO

* * *

08/29/1996 REPLY TO DFT'S OBJECTION TO APPROVAL OF SUPERSEDEA BOND

08/29/1996 ENT:1 BOUND RECORD AND 1 SUPPLEMENTAL BOUND RECORD TRANSMITTED TO THE SUPREME CRT/SC #86569

08/30/1996 ENT:MOT FOR APPROVAL OF SUPER-SEDEAS BOND OVERRULED ALL AS PER JE/BLEVINS

* * *

09/04/1996 JOURNAL ENTRY/DFTS MOTION FOR APPROVAL OF SUPER-SEDEAS BOND/ BLEVINS

09/05/1996 ENT: HOA CONT TO 9/11/96 @10AM BEFORE JUDGE WRIGH

09/05/1996 SUPERSEDEAS BOND/BLEVINS R:1820 F:3978

09/11/1996 ENT: HOA STR - WRIGHT

* * *

11/06/1996 MOTION OF APPELLEE FOR JUDGMENT UPON SUPERSEDEAS BOND & MOTION OF APPELLEE FOR ATTORNEY'S FEES AND COSTS FOR SERVICES PERFORMED ON APPEAL/SC #86568

01/29/1997 ORDER & JUDGMENT ON SUPERSEDEAS BOND (COPY FROM SUPREME COURT) R:1864F:1000

03/12/1997 MANDATE AFFIRMED R:1878 F:1837

08/04/1997 ENT:1 BOUND RECORD RETURNED FROM THE SUPREME COURT

* * *

01/07/2000 2 BOUND RECORDS TRANSMITTED TO THE SUPREME COURT SC#86568

01/10/2000 ORDER/SUPREME COURT SC#86568 R:2216 F:2075

06/23/2000 MANDATE/REVERSED & REMANDED WITH INSTRUCTIONS SC#86568 R:2273 F:4415

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

10/27/1995	J.E. OF J'MENT FILED
	* * *
11/27/1995	CERTIFICATE OF APPEAL ISSUED
11/27/1995	PETITION IN ERROR
	* * *
12/15/1995	RESPONSE TO PETITION
	* * *
12/19/1995	AMENDED DESIGNATION OF RECORD
03/27/1996	NOTICE OF COMPLETION W/INDEX ATTACHED
04/17/1996	AMENDMENT TO PETITION IN ERROR
05/07/1996	RESPONSE TO AMENDED PETITION IN ERROR
05/07/1996	APPELLEE AGREEABLE TO SETTLEMENT CONFERENCE
05/24/1996	BRIEF OF APPELLANT
07/03/1996	APPELLEE'S ANSWER BRIEF
07/23/1996	REPLY BRIEF OF APLNT
08/16/1996	RECORD ORDERED FROM DISTRICT COURT
08/28/1996	2 VOLS. ORIG. RECORD OF 125 PGS.
09/30/1996	CAUSE ASSIGNED TO COA-TULSA
10/10/1996	STANDS ASSIGNED TO COA-DIV. 2
11/05/1996	JE: ----- MEMO OPIN ----- AFFIRMED ----- STUBBLEFIELD, J. CONCUR:GOODMAN,

PJ, BOUDREAU, J. ----- SUMMARY ----- C/ATTYS & DC JUDGE

11/05/1996 AFFIRMED; MEMO OPIN

11/06/1996 MOTION OF APLEE FOR JUDGMENT UPON SUPERSEDEAS BOND & MOT OF APLEE FOR ATTY FEES & COSTS COA/ TULSA

11/22/1996 APLNTS RESP TO MTN OF APLEE FOR JUDGMENT UPON SUPERSEDEAS BOND & MTN OF APLEE FOR ATTNY FEES & COSTS FOR SERVICES PERFORMED ON APPEAL COA/TULSA

11/22/1996 APPELLANT'S PETITION FOR CERTIORARI ($) COA/TULSA

12/05/1996 ANSWER TO PETITION FOR CERTIORARI

01/27/1997 JE: ** ATPC DENIED ** APLEE MTN FOR APPEAL-RELATED COUNSEL FEE GRANTED, ETC. FOLLOWING ISSUANCE OF MANDATE TRL CRT AUTHORIZED TO DETERMINE AMOUNT OF APPEAL-RELATED COUNSEL FEE TO BE AWARDED TO APLEE IN ADVERSARIAL HEARING AFTER PROPER NOTICE APLEES MTN FOR JUDGMENT ON SUPERSEDEAS BOND GRANTED, ETC. AMOUNT OF $28,499.63 PLUS $11,077.39 W/INT AT STATUTORY RATE FROM 10-27-95 & FROM 3-21-96 RESPECTIVEL UNTIL PAID, ETC. DIST CRT DIRECTED TO ENFORCE JUDGMENT AS IF RENDERED IN THAT COURT. CONCUR: HODGES, LAVENDER, SIMMS, HARGRAVE, WILSON, WATT, JJ. CONCUR IN DENYING CERT; CONCUR IN PART & DISSENT IN PART FROM COUNSEL-FEE

AWARD JUD ON SUPERSEDEAS BOND, ETC.: OPALA, J. DISSENT: KAUGER, CJ, SUMMERS, VCJ. C/ATTNYS, DC CRT CLK, COA/TULSA

01/30/1997 MOTION TO SUSPEND EFFECTIVENESS OF MANDATE

02/04/1997 JE: APLEE DIRECTED TO RESPOND TO MTN TO SUSPEND EFFECTIVE- NESS OF MANDATE W/IN 10 DAYS OF DATE OF THIS ORDER N/ATTNYS

02/13/1997 OBJECTION TO MOTION TO SUSPEND EFFECTIVIENESS OF MANDATE

03/03/1997 JE: APLNT'S MOT TO SUSPEND EFFECTIVENESS OF MANDATE GRANTED. MANDATE SH/ISSUE BUT ITS ENFORCEMENT SH/BE STAYED TIL PET FOR CERT IS FILED W/USSC & FOR SO LONG THEREAFTER AS CERT IS PENDING IN THAT CT. APLNT DIRECTED TO NOTIFY TH/CT OF FILING OF ITS PET FOR CERT. CONCUR: KAUGER, CJ, HODGES, LAVENDER, HARGRAVE, OPALA, WILSON, JJ. C/ATTYS **** ADD TO MANDATE ***

03/07/1997 MANDATE ISSUED *** WITHDRAWN PER ORDER OF 1-7-00 ***

* * *

04/22/1997 NOTICE OF FILING PET FOR CERT (W/ USSC)

05/05/1997 LTR F/USSC- CERT FILED 4-25-97

05/22/1997 RECORD RECEIVED FROM COA/TUL

07/23/1997 RECORD RETURNED TO DISTRICT COURT

06/08/1998 LTR FR/USSC DATED 6-1-98 RE:CERT GRANTED & JUDGMENT VACATED & RMND TO CCA

07/06/1998 LTR FR/USSC DATED 7-1-98 W/CERTIFIED COPY OF JUDGMENT & COPY OF OPIN OF THIS CRT. COPY RETURNED THIS DATE

* * *

01/07/2000 JE: MANDATE ISSUED 3-7-97 IS W/DRAWN, RECORD IS ORDERED TRANSMITTED TO CCA TULSA, DIV 2 PURSUANT TO ORDER OF USSC. C/ATTYS, DC CLK, DC JUDGE, COA/TULSA

01/07/2000 Assigned to Court of Civil Appeals, Tulsa (PER ABOVE ORDER OF 1-7-00)

01/11/2000 1 volume Original Record – 94 pages; 1 volume Supplement to the Original Record – pages 95 through 125

01/11/2000 Record to CCA-TUL

01/14/2000 JE: PARTIES SH/TAKE NOTICE THAT B/C APPOINTMENT OF BOUDREAU, J. TO SUP CT, REIF, J., H/BEEN APPOINTED TO SIT ON TH/APPEAL. PANEL OF TH/CASE, UPON REMAND, SH/CONSIST OF GOODMAN, CJ., STUBBLEFIELD, J., & REIF, J. C/ATTYS

02/03/2000 MOTION OF APLEE FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITIES OR SUPPLEMENTAL BRIEF COA/TULSA

02/08/2000 JE: OPIN ------ REVERSED & REMANDED W/ INSTRUCTIONS ----- STUBBLEFIELD,

J. CONCUR: GOODMAN, CJ, REIF, J. ----- SUMMARY ------ C/ATTYS & DC JUDGE

02/08/2000 Reversed and Remanded with Instructions (Opinion)

02/28/2000 MTN TO EXONERATE OR DISCHARGE BOND & MTN FOR ENFORCEMENT–OF AWARDED APPEAL RELATED COSTS COA/TULSA

02/28/2000 Appellee's Petition for Rehearing COA/ TULSA

03/14/2000 APLEE'S OBJECTION TO APLNT'S MTN TO EXONERATE OR DISCHARGE BOND, ETC. COA/TULSA

03/23/2000 REPLY TO APELES OBJECTION TO APLNTS MOTION TO EXONERATE OR DISCHARGE BOND ADN ENFORCE APPEAL-RELATED COSTS COA/TULSA

03/27/2000 JE: APLEE'S MTN TO SUPPLEMENT AUTHORITIES DENIED B/C OPIN WAS FILED 2-8-00. *** AEPR DENIED *** SUPER BOND ORDERED EXONERATED & CLK OF APP CT TO TAX ALL COSTS AGAINST APLEE. N/ATTYS, DC JUDGE, DC CLK & OBJ *** add to mandate- $300.00 costs ***

04/17/2000 Appellee's Petition for Certiorari ($ OC) COA/TULSA

04/24/2000 ORGR received from CCA-TUL

04/28/2000 ANSWER TO APLEE'S PET FOR CERT

05/08/2000 REPLY TO APLNT'S ANSWER TO APLEE'S PET FOR CERT

05/24/2000	JE: *** AEPC DENIED *** CONCUR: SUMMERS, CJ, KAUGER, BOUDREAU, JJ; CONCUR BY REASON OF STARE DECISIS: WATT, WINCHESTER, JJ; DISSENT; HARGRAVE, VCJ, HODGES, LAVENDER, OPALA, JJ. N/ATTYS
05/26/2000	MOTION TO SUSPEND EFFECTIVENESS OF MANDATE
05/31/2000	JE: APLNT DIRECTED TO RESPOND BY 6-5-00 TO APLEES MOTION TO SUSPEND EFFECTIVENESS OF MANDATE. N/ATTNYS
06/05/2000	RESPONSE TO APLEE'S MTN TO SUSPEND EFFECTIVENESS OF MANDATE
06/09/2000	JE: MANDATE SH/ISSUE BUT ITS EFFECTIVENESS SH/BE SUSPENDED PENDING FILING OF PET FOR CERT I/USSC OR EXPIRATION OF TIME TO FILE. N/ATTYS, CLK
06/14/2000	Mandate Issued
06/22/2000	Record Returned to District Court
06/26/2000	Receipt for Mandate
08/28/2000	LTR DATED 8-24-00 FR/USSC RE: PET FOR CERT FILED AS CASE NO. 00-292
11/03/2000	Letter dated 10-30-00 from USSC --- Petition for Writ of Certiorari is granted.

PLAINTIFF'S EXHIBIT B

CONSTRUCTION CHANGE DIRECTIVE

AIA DOCUMENT G714

(Instructions on reverse side. This document replaces AIA Document G713, Construction Change Authorization.)

OWNER	[ ]
ARCHITECT	[ ]
CONTRACTOR	[X]
FIELD	[ ]
OTHER	[ ]

PROJECT:	New Bank Building for First Oklahoma Bank Shawnee, Oklahoma (name, address)
TO CONTRACTOR:	Citizens Band Potawatomi Tribe 1901 S. Gordon Cooper Drive Shawnee, OK 74801 Attn: Mr. Bob Dunning (name, address)
DIRECTIVE NO:	One (1)
DATE:	March 14, 1994
ARCHITECT'S PROJECT NO:	9202
CONTRACT DATE:	N/A
CONTRACT FOR:	General

You are hereby directed to make the following change(s) in this Contract:

Item #1

Omit glass and frames at second floor railing. Run ceiling through at detail JJ-A6.

Completely encase columns in oak similar to detail OO-A6.

Item #2

Omit foam roofing. Furnish single ply EPDM 60 mil fully adhered roofing. Adjust metal flashing as required. (See attached specifications).

PROPOSED ADJUSTMENTS

1. The proposed basis of adjustment to the Contract Sum or Guaranteed Maximum Price is:

   [ ] Lump Sum (increase) (decrease) of $ _____.

   [ ] Unit Price of $ _____ per _____.

   [ ] as provided in Subparagraph 7.3.6 of AIA Document A201, 1987 edition.

   [XX] as follows:

2. The Contract Time is proposed to (~~be adjusted~~) (remain unchanged). The proposed adjustment, if any, is (an increase of N/A days) (a decrease of N/A days).

When signed by the Owner and Architect and received by the Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive (CCD), and

the Contractor shall proceed with the change(s) described above.

The Price Group Architects	Citizens Band Potawatomi Tribe
ARCHITECT	OWNER
14 East 9th Street	1901 S. Gordon Cooper Drive
Address	Address
Shawnee, OK 74801	Shawnee, OK 74801
BY /s/ Donald M. Price	BY /s/ Robert F. Davis
DATE 3-14-94	DATE 3-14-94

Signature by the Contractor indicates the Contractor's agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this Construction Change Directive.

Citizen Band Potawatomi Tribe
CONTRACTOR
1901 S. Gordon Cooper Drive
Address
Shawnee, OK 74801
BY /s/ R. Dunning
DATE 3-15-94

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PLAINTIFF'S EXHIBIT C

MICHAEL MINNIS & ASSOCIATES, P.C.
ATTORNEYS AT LAW
LIBERTY TOWER, SUITE 3160
100 NORTH BROADWAY
OKLAHOMA CITY, OKLAHOMA 73102-8606
MICHAEL MINNIS TELEPHONE (405) 235-7686
DAVID McCULLOUGH TELECOPIER (405) 232-5460

February 7, 1995

American Arbitration Association
14402 Galleria Tower
13455 Noel Road
Dallas, TX 75240-6620

C & L Enterprises, Inc.
c/o Garvin, A.G. Carlton & Mashburn
ATTN: John Mashburn, Esq.
2100 City Place
204 North Robinson
Oklahoma City, OK 73102

RE: 71 E 110 0024 95 – C&L Enterprises, Inc., Request for Arbitration

Dear American Arbitration Association:

We are attorneys for the Citizen Band Potawatomi Indian Tribe of Oklahoma ("Potawatomi"). In that capacity, we have been asked to respond to your January 30 letter. C&L Enterprises, Inc. has requested arbitration concerning their claim against the Potawatomi under a putative contract dated August 25, 1993. This contract is

void and unenforceable for a number of reasons including the following:

1. **Sovereignty.** As a sovereign Indian Nation, the Potawatomi are immune from suit. *See, e.g., Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505 (1991).

2. **Section 81 Approval.** No contract with an Indian tribe is enforceable unless endorsed with the approval of the Secretary of the Interior. 25 U.S.C.A. § 81. The putative C&L contract is not so endorsed.

3. **Lack of Authority.** The putative C&L contract was not signed with appropriate authorization under the Potawatomi constitution. *See, e.g.,* Pot. Const., art. 18, § 2.

4. **Condition Subsequent.** In any event, the putative C&L contract was voided by the occurrence of a condition subsequent. C&L was originally awarded the "contract" as the low bidder to construct a "Perlite Board Foam Insulation" roofing. However, the contract authorized change orders. *Contract,* p. 8, art. 13. The architect determined that the type of roofing should be changed. C&L was not qualified to construct this new roof. Accordingly, new bids were solicited. C&L submitted a new bid at $6,000 less than its original bid. C&L's offer was not accepted because not the low bid and because C&L violated the bidding requirements that preclude the bidder from relying on a subcontractor as C&L did in submitting the subsequent bid.

5. **Architect Approval.** No payments were due until C&L invoices were certified by the architect. *Contract,* p. 7, art. X, ¶ 10.4. The architect did not review and certify

any payments for C&L invoices. Further, the architect had the duty to make the initial decision on all claims under the contract. *Id.* ¶ 10.5. The architect has not made any initial decision in C&L's favor.

6. **No Consideration.** The low bidder (Harry Coates Company, Inc.) was accepted, constructed the roof, and has been paid by the Potawatomi.

Because the C&L request for arbitration is based on a void and unenforceable contract, the arbitrator should not enter any award to C&L.

This response is not intended as an acquiescence to arbitration nor a waiver of any rights or defenses. It is being made solely to apprise the arbitrator of the Potawatomi position and to preserve any and all defenses to the C&L claim.

Very truly yours,

MICHAEL MINNIS & ASSOCIATES, P.C.

/s/ Michael Minnis
Michael Minnis

MM/djp

cc: J.D. Colbert, Potawatomi Tribal Administrator
Price Group Architects and Planners
14 East 9th
Shawnee, OK 74801

PLAINTIFF'S EXHIBIT D

MICHAEL MINNIS & ASSOCIATES, P.C.
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March 17, 1995

American Arbitration Association
ATTN: Tracey L. Hegeman
Commercial Supervisor
14402 Galleria Tower
13455 Noel Road
Dallas, TX 75240-6620

RE: 71 E. 110 00024 95
C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma
L.U.

Dear Supervisor Hegeman:

In your March 7 letter concerning the above-described matter you asked for a response to your "letter of January 30, 1995." As noted in our original correspondence dated February 7, the Citizen Band Potawatomi Indian Tribe of Oklahoma has no intention of participating in arbitration, has not waived sovereign suit immunity, and has no intention of waiving sovereign suit immunity.

In his March 1 letter, John Mashburn cites several cases as putative support for arguments made therein.

These citations of authority do not support Mr. Mashburn's assertions.

For example, Mashburn claims that suit immunity does not protect a tribe engaging in business activity and therefore a "tribe may be sued for breach of a written contract arising out of such conduct, regardless of where the contract was executed." Mashburn relies on a partial quote from 42 C.J.S. § 19a (1991) which in turn cites *Padilla v. Pueblo of Acoma*, 754 P.2d 845, *cert. denied*, 490 U.S. 1029 (1989) (in light of disfavor of sovereign immunity in New Mexico common law, exercise of jurisdiction over tribe for off-reservation conduct allowed as "solely a matter of comity"). A recent Texas federal judge put the *Padilla* case in perspective: "The court's research has led it to the conclusion that the *Padilla* approach is generally rejected outside of the court of that state." *Elliott v. Capital International Bank & Trust*, 870 F.Supp. 733, 734 (E.D. Tex. 1994); *see also in re Greene*, 980 F.2d 590, 594-95 (9th Cir. 1992) *cert. denied*, 114 S.Ct. 681 (1994).

Mashburn also cites *Oklahoma Tax Commission v. Potawatomi*, 111 S.Ct. 905 (1991), but the holding in this case is contrary to his arguments. In this suit, the Supreme Court reiterated prior holdings that tribes are immune from suit. "Indian tribes are "domestic dependent nations," which exercise inherent sovereign authority over their members and territories. Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." *Id.* at 909. (citations omitted).

The sovereign suit immunity of Indian tribes derives from the federal suit immunity and like the former is not dependent on the place where the putative claim arose.

The cases cited from Alaska have no application to Indian tribes in Oklahoma. Alaskan tribes have a relationship to the federal government unique to Alaska and unrelated to the treaties and reservations that are part of the history of the Indians in the continental United States. The Alaskan Indians are organized as "corporations" or "villages." In any event, we urge you to review the authorities yourself.

Very truly yours,

MICHAEL MINNIS & ASSOCIATES, P.C.

/s/ Michael Minnis
Michael Minnis

MM/djp

cc: J.D. Colbert, Potawatomi Tribal Administrator
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PLAINTIFF'S EXHIBIT E

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May 12, 1995

American Arbitration Association
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Dallas, TX 75240-6620

NOTICE

RE: 71 E. 110 00024 95
C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma
L.U.

Dear Supervisor Hegeman:

In your May 8 letter, you advised "that the Association has made an administrative appointment of Mr. Peter Bradford" and stated that any objections to this appointment were to be filed with the Association no later than May 18, 1995.

As noted in previous correspondence, the Citizen Band Potawatomi Indian Tribe of Oklahoma does not have a valid, enforceable contract with C&L Enterprises,

Inc. and, accordingly, the arbitration provisions referenced therein have no legal sanction. Further, the Potawatomi are immune from suit. The Potawatomi have not waived suit immunity nor do they have any intention of doing so. C&L has provided no goods or services to the Potawatomi for which C&L is entitled to compensation.

You are further advised that the Potawatomi have no intention of appearing before Mr. Bradford or anyone else appointed by the Association in this matter, nor any intention of paying any arbitration fee.

Very truly yours,

MICHAEL MINNIS & ASSOCIATES, P.C.

/s/ Michael Minnis
Michael Minnis

MM/djp

cc: J.D. Colbert, Potawatomi Tribal Administrator
John Mashburn, Atty, C&L Enterprises, Inc.
Peter B. Bradford, Esq.